

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Laborczfalvi et al.	Examiner:	Morrison, Jay A.
Serial No.:	10/711,737	Art Unit:	2168
Filed:	September 30, 2004	Conf. No.:	5736
For:	Method and Apparatus for Isolating Execution of Software Applications		

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT**

**UNDER 35 U.S.C. § 154(b) AND 37 C.F.R. § 1.705(b)**

Dear Sir:

This Application for Patent Term Adjustment is a request to recalculate the patent term adjustment indicated in the Notice of Allowance of October 13, 2009 for the above-referenced application and displayed on the Patent Term Adjustment information displayed on PAIR for the above-referenced application. A copy of the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) is attached and labeled "Exhibit A." A copy of the Patent Term Adjustment History on PAIR for the above-referenced application is attached and labeled "Exhibit B."

Applicants submit that this Application for Patent Term Adjustment is timely filed on May 17, 2010, within two months of the day the patent issued (March 16, 2010) and in view of the two-month date falling on Sunday, May 16, 2010.

In accordance with 37 C.F.R. § 1.705(b)(1), Applicants submit that an amount of \$200.00 as set forth in 37 C.F.R. § 1.18(e) is being paid via the U.S. Patent and Trademark Office's electronic filing system's credit card payment option. Please charge any additional fees that may be required for the present submission or credit any overpayments to our Deposit Account No. 03-1721, referencing Attorney Docket No. 2006579-0141 (CTX-105).

### **REMARKS**

Applicants respectfully submit that the correct patent term adjustment under 35 U.S.C. § 154(b) up to the mailing date of the Notice of Allowance is **404** days, not 214 days as indicated in the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) (see Exhibit A) or 270 days as indicated in the Patent Term Adjustment page of PAIR for the above-referenced application (see Exhibit B).

In *Wyeth v. Kappos*, the Federal Circuit ruled that a patentee is entitled to an adjusted patent term that includes calculated adjustments under of 35 U.S.C. § 154(a) and 35 U.S.C. § 154(b) (*see Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010)). The United States Patent and Trademark Office (USPTO) calculated and indicated in Exhibit B the patent term adjustment of 270 days under 37 C.F.R. § 1.702(a). Any circumstances during the prosecution of the above-referenced application that constituted a failure to engage in reasonable efforts to conclude processing of examination of such application as set forth in 37 C.F.R. § 1.704 were taken into account in the initial calculation of the patent term adjustment of 270 days indicated in the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b). Exhibit B indicates that the 463 days of patent term adjustment due to USPTO delay was reduced by 193 days due to Applicant delay resulting in 270 days of patent term adjustment. Applicants do not disagree with this calculation.

Additionally, the above-referenced application has been pending for more than three years and thus is entitled to patent term adjustment under 37 C.F.R. § 1.702(b). A Request for Continued Examination was filed on February 11, 2008, stopping the clock for delay under 37 C.F.R. § 1.702(b)(1). Accordingly, under 37 C.F.R. § 1.702(b), Applicants are entitled to a patent term adjustment of an additional 134 days, the period beginning on the day after the date which is three years after the filing date (September 30, 2007) and ending on the day a Request for Continued Examination was filed (February 11, 2008). Therefore, the patent term adjustment of 134 days under 37 C.F.R. § 1.702(b) should be added to the 270 day patent term adjustment under 37 C.F.R. § 1.702(a) indicated in Exhibit B. Applicants respectfully submit that under 37 C.F.R. § 1.702, the patent term adjustment should be 404 days. Under 37 C.F.R.

§1.705(b)(2)(iii), Applicants submit that the above-referenced application is not subject to a Terminal Disclaimer.

Accordingly, Applicants respectfully submit that the correct patent term adjustment under 35 U.S.C. § 154(b) is **404** days and request reconsideration of the patent term adjustment.

### **CONCLUSION**

In light of the aforementioned remarks, Applicants respectfully request reconsideration of the patent term adjustment of the above-referenced application. Should the Examiner feel that a telephone conference with Applicants' attorney would be helpful, the Examiner is urged to contact the Applicants' attorney at the telephone number identified below.

Respectfully submitted,  
CHOATE, HALL & STEWART LLP

Date: May 17, 2010

Respectfully submitted,

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